

State of Washington  
Department of Ecology  
Office of Columbia River  
TERM PERMIT S4-33082P

File NR S4-33082  
WR Doc ID 5525647

PRIORITY DATE  
12/3/2012

WATER PERMIT APPLICATION NUMBER  
S4-33082

MAILING ADDRESS  
Washington Department of Natural Resources  
SE Regional Office  
713 Bowers Rd  
Ellensburg, WA 98926-9341

SITE ADDRESS  
Horse Heaven Hills area, north of Paterson, WA  
  
See Place of Use description below.

Quantity Authorized for Diversion

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
13.82	CFS	2,200

Purpose

PURPOSE	DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Irrigation of 1,100 acres	13.82		CFS	2,200		03/01 - 11/30

REMARKS

- (1) Water used under this authorization is mitigated by water being leased by the applicant from Ecology under an associated water service contract. Mitigation water is subject to the terms of Ecology's lease contract with the Port of Walla Walla (Contract C1100119).
- (2) Of the total 2,200 ac-ft authorized, 842 ac-ft are mitigated by water subject to curtailment during periods of low flow pursuant to Chapter 173-563 WAC. See *Provisions* below for details.
- (3) This TEMPORARY AUTHORIZATION expires on November 30, 2020, or earlier. See *Provisions* below for details.

ADDITIVE	IRRIGATED ACRES		PUBLIC WATER SYSTEM INFORMATION	
	NON-ADDITIVE		WATER SYSTEM ID	CONNECTIONS
1100	0		N/A	

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Benton	Columbia River	Pacific Ocean	31-Rock-Glade

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Columbia River	1185600000000000 1075640000000000	05N	26E.W.M.	18	NWNW	45.92559	-119.62132

(POD straddles two parcels)

Datum: NAD 83

Place of Use

PARCELS

1167600000000000, 1367600000000000, and 1167700000000000

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

Sections 16 and 36 of T. 07 N., R. 26 E.W.M., AND Section 16 of T. 07 N., R. 27 E.W.M.

Proposed Works

Irrigation system already in full operation.



### Measurement of Water Use

How often must water use be measured?	Weekly
How often must water use data be reported to Ecology?	Annually (By Jan.31 of the following year)
What volume should be reported?	Total annual volume in acre-feet
What rate should be reported?	Annual peak rate of diversion in cfs

### Provisions

#### Temporary Authorization, Termination, Cancellation

This temporary authorization relies upon mitigation water leased from Ecology under an associated water service contract and is subject to the terms of that contract.

The associated water service contract remains in effect for a maximum of eight (8) irrigation seasons yet allows for early termination under certain circumstances. As such, this temporary authorization shall remain in effect for up to eight irrigation seasons (until November 30, 2020, at the latest), or at such time as the associated water service contract is terminated.

This temporary authorization shall be subject to cancellation for non-compliance with its limitations and provisions. In such instance, should non-compliance continue, enforcement proceedings by Ecology may be initiated.

This temporary authorization shall be subject to cancellation for non-payment of lease fees as outlined in the associated water service contract. In such instance, should water use continue, enforcement proceedings by Ecology may be initiated.

#### Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for the source identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

#### Department of Fish and Wildlife Requirement(s)

The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://wdfw.wa.gov/about/contact/>.

No dam or weir shall be constructed in connection with this diversion.

#### Quantity Limits, Flow and Regulation

842 ac-ft of this authorization is subject to the following minimum flows as specified in WAC 173-563-040 and WAC 173-563-050 and the following table. It is subject to regulation by the Department of Ecology for protection of instream resources whenever the March 1 forecast of April-September runoff at The Dalles is 60 MAF or less, and when gaged flows are predicted by the BPA 30-Day Power Operation



Plan to violate the following minimum flow provisions at:

Primary Control Station: McNary  
River Mile: 292.0

Minimum Average Weekly Flows  
Columbia River Projects  
(1,000 cubic feet/second)

PRIMARY CONTROL STATION RIVER MILE	Chief Joseph*	Wells/ Rocky Reach*	Rock Island & Wanapum*	Priest Rapids	McNary	John Day	The Dalles
	(545.1)	(515.6) (473.7)	(453.4) (415.8)	(397.1)	(292.0)	(215.6)	(191.5)
Jan	30	30	30	70	60	60	60
Feb	30	30	30	70	60	60	60
Mar	30	30	30	70	60	60	60
Apr 1-15	50	50	60	70	100	100	120
Apr 16-25	60	60	60	70	150	150	160
Apr 26-30	90	100	110	110	200	200	200
May	100	115	130	130	220	220	220
Jun 1-15	80	110	110	110	200	200	200
Jun 16-30	60	80	80	80	120	120	120
Jul 1-15	60	80	80	80	120	120	120
Jul 16-31	90	100	110	110	140	140	140
Aug	85	90	95	95	120	120	120
Sep	40	40	40	40	60	85	90
Oct 1-15	30	35	40	40	60	85	90
Oct 16-31	30	35	40	70	60	85	90
Nov	30	30	30	70	60	60	60
Dec	30	30	30	70	60	60	60

\* For the reach from Grand Coulee through Wanapum, minimum average weekly flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff and adjustment) at Priest Rapids, whichever is higher. As provided in WAC 173-563-050(1), the minimum average weekly flows set forth in this subsection are subject to a reduction of up to 25 percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs.

Use of water under this authorization shall be contingent upon the water right holder's use of up-to-date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities.

**Easement and Right-of-Way**

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

**Water Use Efficiency**

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.



### Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials shall have access at reasonable times to the project location and to inspect at reasonable times records of water use, wells, diversions, measuring devices, and associated distribution systems for compliance with water law.

### Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Term Permit Application No. S4-33082, subject to existing rights and the provisions specified above.

### Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

Signed at Yakima, Washington, this

*19th*

day of

*September*

2013.



Derek I. Sandison, Director  
Office of Columbia River



## INVESTIGATOR'S REPORT

Application for Water Right -- WDNR

Water Right Control Number S4-33082

Thomas Perkow, Department of Ecology

## BACKGROUND

This report serves as the written findings of fact concerning Term Permit Application Number S4-33082.

**Table 1: Summary of Requested Term Permit**

<b>Applicant Name:</b>	Washington Department of Natural Resources
<b>Date of Application:</b>	12/3/2012
<b>Place of Use:</b>	See <i>Term Permit</i> for description

Point of Diversion	County	Waterbody	Tributary To	WRIA
Existing pump station	Benton	Columbia River	Pacific Ocean	31-Rock-Glade

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Irrigation	13.82	CFS	2200	03/01	11/30

Source Name	Parcel	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Columbia River	118560000000000 107564000000000 (POD straddles two parcels)	05N	26E.W.M.	18	NW NW	45.92559	-119.62132
						Datum: NAD 83	

CFS = Cubic Feet per Second; Ac-ft/yr = Acre-feet per year; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian.

## Legal Requirements for Approval of Appropriation of Water

### *Public Notice*

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Tri-City Herald on February 20 and February 27, 2013. No responses were received in the 30-day response period provided.

### *Consultation with the Department of Fish and Wildlife*

The Department must give notice to the Washington Department of Fish and Wildlife (WDFW) of applications to divert, withdraw or store water. Such notice was sent to WDFW on March 29, 2013. In a letter dated April 4, 2013, WDFW indicated that they do not oppose approval of the subject application. In the letter, WDFW recognized the proportional mitigation, the instream flow benefit, and the temporary nature of the project. WDFW asks that impacts due to withdrawals resulting from this project be evaluated under SEPA, if SEPA is triggered.

### *Consultation under Chapter 173-563 WAC*

Under WAC 173-563-020(4), before any application is considered for approval or denial after July 27, 1997, Ecology must consult with appropriate local, state, and federal agencies and Indian tribes. The consultation process solicits input regarding possible impacts on fish and existing water rights. Consultation letters were sent on March 29, 2013. No responses other than the WDFW letter discussed above were received in the 30-day response period provided.



### *State Environmental Policy Act (SEPA)*

A water right application is subject to a SEPA threshold determination (i.e. an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met:

- (a) It is a surface water right application for more than one cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g. the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

### **INVESTIGATION**

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#### **Proposed Use**

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An existing point of diversion on the Columbia River to serve an existing irrigation system providing water to row crops. No new construction is proposed.

#### **Other Rights Appurtenant to the Place of Use**

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- Surface water certificate S4-26611C covers 30 acres of irrigation in Section 16, T.07 N., R. 26 E.W.M.
- Claim 067544 asserts stockwater use in Section 36, T. 07 N., R. 26 E.W.M.
- Change application CS4-25639(A)@2 proposes irrigation within all three places of use. This application was favorably processed by the Benton County Water Conservancy Board. Ecology approved the BCWCB's decision with modifications in January, 2013.

#### **Impairment Considerations**

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Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would:

- Interrupt or interfere with the availability of water to an adequately constructed groundwater withdrawal facility of an existing right. An adequately constructed groundwater withdrawal facility is one that (a) is constructed in compliance with well construction requirements and (b) fully penetrates the saturated zone of an aquifer or withdraws water from a reasonable and feasible pumping lift.
- Interrupt or interfere with the availability of water at the authorized point of diversion of a surface water right. A surface water right conditioned with instream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the instream flow more frequently or for a longer duration than was previously the case.



- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to instream flows.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g. via sea water intrusion).

Water use under this authorization is mitigated by water placed into the State's Trust Water Right Program and used as instream flow. This mitigation water derives from seven water rights temporarily leased by Ecology's Office of Columbia River. Five of these rights, comprising a combined total of 1,658 ac-ft, predate Chapter 173-563 WAC and are not subject to curtailment during periods of low flow in favor of the instream flows as described within this WAC (Instream Flows). However, two of these seven rights, comprising a combined total of 3103 ac-ft, are subject to Instream Flows.

Some of the older water in the TWRP has already been allocated under a separate Term Permit (G4-33079P), leaving 1,358 ac-ft available for mitigation that is not subject to Instream Flows. This Term Permit Application requests 2,200 ac-ft of water and therefore 842 ac-ft (2,200 ac-ft – 1,358 ac-ft) of mitigation water for this authorization would be subject to Instream Flows and may be curtailed during periods of low flow as described within Chapter 173-563 WAC. However, should senior leases expire in whole or in part, and older water not subject to Chapter 173-563 WAC become available, this authorization may benefit in whole or part. Such mitigation water accounting will be managed by OCR and discussed with the applicant prior to each irrigation season.

Since the new use of water is proportionately offset by mitigation water, interruption or interference to other water users is not expected. This authorization would be subject to the same 842 ac-ft of curtailment during periods of low flow as outlined in Chapter 173-563 WAC and, as such, interruption or interference with Instream Flows is not expected. Only surface water is proposed for diversion, and interruption or interference with groundwater users is not expected.

## Water Availability

For water to be available for appropriation, it must be both physically and legally available.

### *Physical availability*

For water to be physically available for appropriation there must be ground or surface water present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use or uses. In addition, the following factors are considered:

- Volume of water represented by senior water rights, including federal or tribal reserved rights or claims;
- Water right claims registered under Chapter 90.14 RCW;
- Ground water uses established in accordance with Chapter 90.44 RCW, including those that are exempt from the requirement to obtain a permit; and
- Potential riparian water rights, including non-diversionary stock water;
- Lack of data indicating water usage can also be a consideration in determining water availability, if the department cannot ascertain the extent to which existing rights are consistently utilized and cannot affirmatively find that water is available for further appropriation.

Water use under this application is proposed to be diverted from the Columbia River from an existing pump station. The pump station is located on Lake Umatilla, backwater held by John Day Dam. There are no reports of unavailability of water at this pump station.



### *Legal availability*

To determine whether water is legally available for appropriation, the following factors are considered:

- Regional water management plans – which may specifically close certain water bodies to further appropriation.
- Existing rights – which may already appropriate physically available water.
- Fisheries and other instream uses (e.g. recreation and navigation). Instream needs, including instream and base flows set by regulation. Water is not available for out of stream uses where further reducing the flow level of surface water would be detrimental to existing fishery resources.
- The Department may deny an application for a new appropriation in a drainage where adjudicated rights exceed the average low flow supply, even if the prior rights are not presently being exercised.

Water use under this authorization is mitigated by water in the State's Trust Water Right Program (Trust) under a lease agreement. That lease agreement (C 1100119) remains in effect for a maximum of eight (8) irrigation seasons yet allows for early termination under certain circumstances. As such, this temporary authorization shall remain in effect for up to eight irrigation seasons (until November 30, 2020, at the latest), or at such time as the associated water service contract is terminated. Some of the mitigation water (up to 842 ac-ft) would not be available during periods of low flow as described in Chapter 173-563 WAC. As such, up to 842 ac-ft may not be available to be diverted under this authorization during such low flow periods.

Water use under this authorization would be mitigated by water formerly used under all seven rights currently held in Trust.

### Beneficial Use

The proposed use of water – irrigation – is defined in statute as a beneficial use (RCW 90.54.020(1)). Beneficial use also encompasses reasonable use. The proposed use of 2200ac-ft/yr to irrigate 1100 acres of row crops equates to 2.0 ac-ft per acre each year. Data from the Washington Irrigation Guide and institutional knowledge suggest this annual quantity of irrigation for the production of row crops in this area is on the low side. However, conversations with the applicant indicate that the most up-to-date irrigation strategies are employed. The cost of pumping this quantity of water this far from the Columbia River encourages this practice. This quantity would not result in a waste of water from excess irrigation of row crops in this area.

### Public Interest Considerations

#### *Consideration of Protests and Comments*

No protests were filed against this application.

### Conclusions

All legal requirements have been satisfactorily addressed:

- 1) The proposal was properly noticed.
- 2) Notice was given to the Washington Department of Fish and Wildlife for consultation.
- 3) Consultation with relevant agencies and tribes was solicited.
- 4) Impairment is not expected.
- 5) Water is available through mitigation.



- 6) Water will be applied to beneficial use without waste.
- 7) The proposed water use will not be detrimental to the public interest.

## **RECOMMENDATIONS**

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Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed on the *Term Permit*.

### **Purpose of Use and Authorized Quantities**

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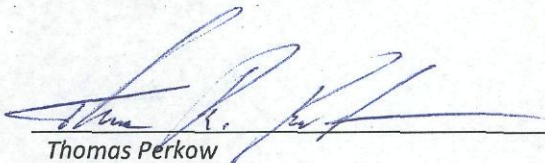
The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

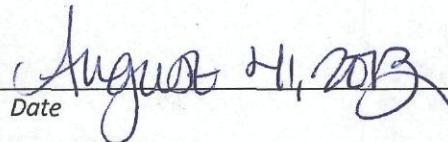
13.82 cfs  
2,200 acre-feet per year  
For the irrigation of 1,100 acres March 1 to November 30

Point of Diversion:  
NW¼, NW¼, Section 18, Township 5 North, Range 26 E.W.M.

Place of Use:  
Section 16 and 36 of T. 07 N., R. 26 E.W.M., AND Section 16 of T. 07 N., R. 27 E.W.M.

(Parcels: 116760000000000, 1367600000000000, and 1167700000000000)

  
Thomas Perkow

  
Date

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